

SUMTER COUNTY
REQUEST FOR PROPOSAL CONTRACT PROVISIONS
MILLIMAN'S EXCEPTIONS TO CONTRACT PROVISIONS

Milliman's proposal is subject to County's acceptance of the following terms and conditions:

INTENT AND GENERAL INFORMATION

- 1) Standard Insurance Requirements. Milliman's Professional Liability insurance is provided by a captive called PCIC. Captive insurers are not rated, therefore, please add "providing Commercial General Liability" after the word "companies" in the "**Financial Rating of Insurance Companies**" section. In addition, please change the title of "**Waiver of Subrogation**" to **Waiver of Subrogation for General Liability Insurance Only**. Finally, Milliman provides professional actuarial consulting services and therefore does not carry X-C-U Coverage as we do not anticipate explosions or collapses during the provision of our services, therefore, please strike "X-C-U Coverage" from the Commercial General Liability section.
- 2) Milliman is an international company with offices located all over the globe. Milliman fully intends to meet all applicable requirements under state and federal laws, therefore, please add "applicable" to **GOVERNING LAWS AND REGULATIONS**.
- 3) Milliman requires reasonable notice of all audits and when the confidentiality obligations of a particular agreement are not mutual, we request that the auditing party execute a mutually agreed to non-disclosure agreement prior to the audit, therefore, at the beginning of **RIGHT TO AUDIT RECORDS**, please add "At a mutually agreed to date and time, and upon the execution of a mutually agreed to non-disclosure agreement, the".

STATEMENT OF TERMS AND CONDITIONS

- 1) Milliman is an international company with offices located all over the globe. Milliman fully intends to meet all applicable requirements under state and federal laws, therefore, please add "applicable" before the word "federal" in **GOVERNING LAWS AND REGULATIONS**. Additionally, Milliman must be able to enforce the Limitation on Liability clause within all agreements that are executed by Milliman. Many states have case law which indicates that the Limitation of Liability may likely be unenforceable. Because this is a material inducement for Milliman to provide services, the parties need to agree on a method of ensuring enforceability, therefore, because Florida is a state where the limit may not be enforceable, Milliman would like to request the follow language be added to **GOVERNING LAWS AND REGULATIONS**

"The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of Florida without regard to its conflict of laws provisions. It is the intention of the parties that the Limitation of Liability paragraph below shall be enforceable. In the event that the Limitation of Liability clause is not enforceable, then the parties agree that New York law, and not Florida law shall apply to that clause. In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect."

- 2) Milliman would like to clarify that the terms and conditions provided with the Request for Proposal must first be mutually agreed to by Milliman and the County before the terms are

enforceable, therefore, please add “mutually agreed to” after “The” in the first line of **OBLIGATION OF WINNER BIDDER.**

3) Please add the following new clauses:

“TOOL DEVELOPMENT. Contractor shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Contractor or developed during the course of the provision of the Services provided such generic documents or templates do not contain any County Confidential Information or proprietary data. Rights and ownership by Contractor of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of County’s proprietary data or County Confidential Information. To the extent that Contractor may include in the materials any pre-existing Contractor proprietary information or other protected Contractor materials, Contractor agrees that County shall be deemed to have a fully paid up license to make copies of the Contractor owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the County without the written permission of Contractor or except as otherwise permitted hereunder.

NO THIRD PARTY DISTRIBUTION. Contractor's work is prepared solely for the use and benefit of County in accordance with its statutory and regulatory requirements. Contractor recognizes that materials it delivers to County may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor 's work and may include disclaimer language on its work product so stating. To the extent that Contractor 's work is not subject to disclosure under applicable public records laws, County agrees that it shall not disclose Contractor 's work product to third parties without Contractor 's prior written consent; provided, however, that County may distribute Contractor 's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Contractor 's work product for any purpose other than to provide services to County, or (ii) any applicable regulatory or governmental agency, as required.

LIMITATION OF LIABILITY. _Contractor will perform all services in accordance with applicable professional standards. The parties agree that Contractor, its officers, directors, agents and employees, shall not be liable to County, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three (3) times the professional fees paid to Contractor with respect to the work in question. In no event shall Contractor be liable for lost profits of County or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Contractor.

USE OF CONTRACTOR'S NAME. County agrees that it shall not use Contractor's name, trademarks or service marks, or refer to Contractor directly or indirectly in any media release, public announcement or public disclosure, including in any promotional or marketing materials, customer lists, referral lists, websites or business presentations without Contractor's prior written consent for each such use or release, which consent shall be given in Contractor's sole discretion.

DISPUTES. In the event of any dispute arising out of or relating to the engagement of Milliman by County, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors."

DRUG FREE WORKPLACE CERTIFICATE

1) This certificated requires a signed copy of a written statement from employees regarding their receipt of the Drug Free Workplace Certificate included in the RFP documents. Milliman employees are made aware of Milliman's policy regarding our drug free workplace, however as each of our Practices has slightly different requirements regarding acknowledgement of our policy, it is logistically problematic to state that all of our 2800 employees will sign the certificate, therefore, please strike ", and requires employees to sign copies of such written (*) statement to acknowledge their receipt" from the document.

SAMPLE PROFESSIONAL SERVICES AGREEMENT

1) It is Milliman's intent to have the County maintain rights to the deliverables provided under the final executed agreement, however, in order to mitigate risk in regard to third party liability, Milliman must be able to maintain control of distribution of materials that contain Milliman proprietary or confidential information. Additionally, Milliman must be able to maintain rights to its proprietary information, even information that is developed during the course of its provision of services to the County. The deliverables are prepared solely for the internal business use of the State and therefore may not be applicable to third parties. Therefore, please add "Subject to Section 18 and Section 19, all" to the beginning of Section 7(a) and Section 7(b).

2) Milliman requires reasonable notice of all audits and when the confidentiality obligations of a particular agreement are not mutual, we request that the auditing party execute a mutually

agreed to non-disclosure agreement prior to the audit, therefore, in subsection 7(c), at the beginning of the second sentence, please add “At a mutually agreed to date and time, and upon the execution of a mutually agreed to non-disclosure agreement, the”.

3) Except in very limited situations, Milliman’s risk management policies require that Milliman limit its indemnification to clients to third party claims brought against the client resulting from Milliman’s gross negligence or willful misconduct, therefore please change Section 12 as follows:

“In the event of default by the Board hereto, the Board shall be liable for all costs and expenses, including reasonable attorney’s fees, incurred by the Consultant and enforcing its rights hereunder, whether litigation be instituted or not, and at the trial court and appellate court level. Consultant agrees to indemnify, defend and hold the Board, its officers, directors, agents and employees harmless from and against any liability, damages, losses, judgment, and other expense (including but not limited to reasonable attorney’s fees and court costs) for any third party claim brought against the Board arising out of or resulting from Consultant’s grossly negligent act or omission in the performance of services hereunder. The Board agrees that it will promptly notify and tender the defense to Consultant of any indemnified claim, provided that the Board’s failure to provide prompt notice shall not relieve Consultant from liability herein except to the extent Consultant is prejudiced by such failure, and Consultant shall, at its sole expense, defend, and at its sole discretion, settle any such indemnifiable claim, provided that, Consultant shall obtain the Board’s consent in the event of any settlement, which consent shall not be unreasonably withheld. The Board may participate in the defense of any indemnified claim at its own expense.”

4) Milliman must be able to enforce the Limitation on Liability clause within all agreements that are executed by Milliman. Many states have case law which indicates that the Limitation of Liability may likely be unenforceable. Because this is a material inducement for Milliman to provide services, the parties need to agree on a method of ensuring enforceability, therefore, because Florida is a state where the limit may not be enforceable, Milliman would like to request the follow language replace the language found in Section 13:

“This contract shall be governed under the laws of the State of Florida, without regard to its conflict of laws provisions and that any action for the enforcement, construction or interpretation of this agreement shall be maintained in Sumter County, Florida. It is the intention of the parties that the Limitation of Liability paragraph below shall be enforceable. In the event that the Limitation of Liability clauses is not enforceable, then the parties agreed that New York law, and not Florida law, shall apply to that clause. In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.”

Milliman is willing to discuss an alternative to this language if necessary.

5) Milliman is an international company with offices located all over the globe. Milliman fully intends to meet all applicable requirements under state and federal laws, therefore, please add “applicable” before the word “federal” in Section 16.

6) Please add the following new clauses:

“18. **Tool Development.** Consultant shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Board Confidential Information or proprietary data. Rights and ownership by Consultant of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Board’s proprietary data or Board Confidential Information. To the extent that Consultant may include in the materials any pre-existing Consultant proprietary information or other protected Consultant materials, Consultant agrees that Board shall be deemed to have a fully paid up license to make copies of the Consultant owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Board without the written permission of Consultant or except as otherwise permitted hereunder.

19. **No Third Party Distribution.** Consultant's work is prepared solely for the use and benefit of Board in accordance with its statutory and regulatory requirements. Consultant recognizes that materials it delivers to Board may be public records subject to disclosure to third parties, however, Consultant does not intend to benefit and assumes no duty or liability to any third parties who receive Consultant 's work and may include disclaimer language on its work product so stating. To the extent that Consultant 's work is not subject to disclosure under applicable public records laws, Board agrees that it shall not disclose Consultant 's work product to third parties without Consultant 's prior written consent; provided, however, that Board may distribute Consultant 's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Consultant 's work product for any purpose other than to provide services to Board, or (ii) any applicable regulatory or governmental agency, as required.

20. **Limitation of Liability.** Consultant will perform all services in accordance with applicable professional standards. The parties agree that Consultant, its officers, directors, agents and employees, shall not be liable to Board, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three (3) times the professional fees paid to Consultant with respect to the work in question. In no event shall Consultant be liable for lost profits of Board or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of Consultant.

21. **Use of Consultant’s Name.** Board agrees that it shall not use Consultant’s name, trademarks or service marks, or refer to Consultant directly or indirectly in any media release,

public announcement or public disclosure, including in any promotional or marketing materials, customer lists, referral lists, websites or business presentations without Consultant's prior written consent for each such use or release, which consent shall be given in Consultant's sole discretion."